

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0158P**

**Use Tax**

**Calendar Years 1995, 1996, and 1997**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer markets upscale kitchen, garden and home merchandise through five entities. All five entities market via mail order catalogs and three subsidiaries have retail stores. Taxpayer files a consolidated federal income tax return under the name of the parent corporation.

In the audit period, taxpayer had mail order catalogue activities and three stores in Indiana. At audit, it was determined that the taxpayer failed to pay tax on fixed assets and catalogues shipped into Indiana.

Taxpayer failed to remit use tax on clearly taxable capital assets and catalogues shipped into Indiana. The imposition of use tax on catalogues and advertising literature is contained in Sales Tax Information Bulletin #54 and 45 IAC 2.2-3-4.

1. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer's audit report revealed that it failed to remit use tax on capital assets and catalogues used in Indiana.

Taxpayer states it did not collect the tax on the catalogues sent to the residents of Indiana based upon its review of the Indiana laws, the facts in the **D.H. Holmes** decision, and the fact that the mail order companies are separate and distinct from the retail stores. Taxpayer states that many states have lost court cases involving sales and use tax on catalogs because their statute has not been changed to include the language that is similar to Louisiana's law – that the use tax is imposed on distribution. Taxpayer further states that Indiana's use tax statutes do not include distribution as a taxable event, which is reason for the abatement of penalty.

Taxpayer failed to self assess use tax on taxable capital assets and catalogues distributed in Indiana. Although "distribution" is not shown as a taxable event, 45 IAC 2.2-3-4 is clear that tangible personal property consumed in Indiana is subject to Indiana use tax unless the Indiana state gross retail tax has been collected at the point of purchase. Information Bulletin #54 is also clear regarding taxability.

Taxpayer did not provide reasonable cause to allow a waiver of the penalty.

### **FINDING**

Taxpayer's protest is denied.